

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

Robert M. Charles, Jr. NV State Bar No. 006593
Email: rcharles@lrlaw.com
John Hinderaker AZ State Bar No. 018024
Email: jhinderaker@lrlaw.com
Marvin Ruth NV State Bar No. 10979
Email: mruth@lrlaw.com

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,¹

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,²

USA SECURITIES, LLC,³

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR¹
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR²
Case No. BK-S-06-10729-LBR³

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTIONS OF
USACM TRUST TO PROOFS OF
CLAIM BASED UPON
INVESTMENT IN THE GARDENS
\$2.425 LOAN**

Date of Hearing: October 21, 2010

Time of Hearing: 9:30 a.m.

Estimated Time for Hearing: 10 minutes

Geoffrey L. Berman declares under penalty of perjury:

1. I am an adult person competent to testify in court.
2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 21, 2007.

3. I am the Trustee of the USACM Liquidating Trust (“USACM Trust”), which is an entity created by the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (“Plan”), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. Around July 2005, USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as “The Gardens, LLC.” A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The total loan amount proposed was \$2,425,000. The loan proceeds were to be used by Borrower to refinance and complete construction of a 164 unit time share development located on 7.5 acres in Orlando, Florida. The Offer Sheet described the investment as a “First Trust Deed Investment” and noted that the investment would be secured by a first deed of trust on approximately 7.5 acres of land and a subordinated deed of trust on an adjacent property called the Parliament House and 18 other time share units being developed by Parliament Partners.

5. The Offer Sheet indicated that the loan would be repaid through the sale of time share units and indicated that the loan to value ratio would be approximately 66% including the value of additional collateral. This loan to value ratio is supported by an appraisal prepared by Integra Realty Resources, Orlando dated August 22, 2005.

6. On August 15, 2005, Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Mortgage” (the “Note”) and a Loan Agreement. The Note and Loan Agreement provided for a loan in the initial principal amount of \$2,425,000. The loan was intended to refinance, and provide funds to complete, the development of time share condominiums. The Note was secured by two documents entitled “Mortgage, Security Agreement and Assignment of Rents” (“Mortgages”) that were recorded in the official records of Orange

1 County, Florida on August 24, 2005. The USACM Trust is aware of no evidence that
2 USACM offered to or did execute any guaranty of the Direct Lenders' Investment in this
3 loan.

4 7. Pursuant to its terms, the note was scheduled to mature on August 28, 2006.
5 According to the USACM "Loan Summary" filed in this case, Borrower was performing
6 on the Note as of July 31, 2006. The USACM "Loan Summary" dated February 28, 2007
7 filed in this case indicated that the Borrower was in default by that date. At that time,
8 USACM's records indicated that the unpaid principal balance was \$1,925,000.

9 8. Based upon a search of the Orange County, Florida public records it appears
10 that the rights of the mortgagees for both Mortgages were assigned to Asset Resolution,
11 LLC on November 24, 2008. It appears that the original mortgagors still hold title to the
12 two properties securing the Loan, but that tax liens may have been recorded.

13 9. During this bankruptcy case through the transfer of servicing to Compass,
14 USACM treated the Direct Lenders with respect to any interim payments by the borrower
15 in accordance with this Court's orders and the confirmed Plan. The USACM Trust has not
16 been able to determine the ultimate disposition of The Gardens \$2.425 Loan, the collateral
17 securing that loan or whether the Direct Lenders were, or may eventually be, repaid in
18 whole or in part.

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Dated: September 9, 2010

21 /s/Geoffrey L. Berman

22 Geoffrey L. Berman

23 Copy of the foregoing (without exhibits)
24 mailed by first class postage prepaid
25 U.S. Mail on September 9, 2010 to the
26 investors in the Gardens \$2.425 loan listed
on Exhibit A.

s/ Leilani Ebanks
Leilani Ebanks